

**STATE OF CALIFORNIA  
DEPARTMENT OF INSURANCE  
45 Fremont Street, 22nd Floor  
San Francisco, California 94105**

**NOTICE OF PROPOSED ACTION AND  
NOTICE OF PUBLIC HEARING**

**RH02020999  
DATE: April 26, 2002**

**SUBJECT OF PROPOSED RULEMAKING**

The Insurance Commissioner proposes to adopt the regulations described below after considering comments from the public. The Commissioner proposes to amend Title 10, Chapter 5, Subchapter 4.8, Articles 6, and 8, and Subchapter 4.9 as well as Title 10, California Code of Regulations, Chapter 5, Subchapter 7.7<sup>1</sup>. The amendments to the regulations will codify practices that are already in use to enable the commencement of a rate hearing within 180 days of the application for a rate increase, to facilitate the approval of settlements, to put a time limit on the final decision of the Commissioner and to realize other procedural efficiencies.

**PUBLIC HEARING**

A public hearing has been scheduled in connection with this proposed action. A public hearing will be held to permit all interested persons the opportunity to present statements or arguments, orally or in writing, regarding these proposed amendments to regulations. The hearing will be held:

Date and Time: July 11 at 9:00 am

Location: Department of Insurance Hearing Room  
45 Fremont Street, 22<sup>nd</sup> Floor  
San Francisco, CA 94105

Date and Time: July 12 at 9:00 am

Location: Ronald Reagan State Office Building  
300 South Spring Street  
Ground Floor Hearing Room  
Los Angeles, CA 90013

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<sup>1</sup> Specifically, the following sections are modified: 2642.2, 2648.4(b), 2651.1, 2652.5, 2655.1, 2655.5, 2655.6, 2655.10, 2656.1, 2656.2, 2656.3, 2656.4, 2658.1, 2659.1, 2661.3 and 2697.3. New sections 2659 and 2660 are added.

These hearings will continue on the dates noted until all testimony has been completed or 4:00 p.m., whichever is earlier.

### **ACCESS TO HEARING ROOMS:**

The facilities to be used for the public hearings are accessible to persons with mobility impairments. Persons with sight or hearing impairments are requested to notify the contact person listed below for these hearings in order to make special arrangements, if necessary.

### **AUTHORITY AND REFERENCE**

The proposed regulations will implement, interpret and make specific the provisions of Insurance Code section 1861.08, with reference to Insurance Code section 1861.055. Insurance Code section 10089.11 also provides the authority for this rulemaking. The proposed regulations also clarify certain aspects of the interaction between the Insurance Code and the Government Code's Administrative Procedure Act. *Fireman's Fund Insurance Cos. v. Quackenbush* (1997) 52 Cal. App.4<sup>th</sup> 599 and *RLI Insurance Co. Group v. Superior Court* (1996) 51 Cal. App.4<sup>th</sup> 415 have clarified the law regarding the Commissioner's authority in certain respects and the proposed regulations delete certain provisions in light of this case law..

### **PRESENTATION OF WRITTEN COMMENTS; CONTACT PERSONS**

All persons are invited to submit written comments on the proposed regulations during the public comment period. The public comment period will end at 5:00 p.m. on June 28, 2002. Please direct all written comments to the following contact person:

Andrea Biren, Chief Administrative Law Judge  
California Department of Insurance  
45 Fremont Street, 22nd Floor  
San Francisco, CA 94105  
Telephone: (415) 538- 4246

Questions regarding procedure, comments, or the substance of the proposed action should be addressed to the above contact person. If she is unavailable, inquiries may be addressed to the following backup contact person:

George Teekell, Staff Counsel  
California Department of Insurance  
45 Fremont Street, 21<sup>st</sup> Floor  
San Francisco, CA 94105  
Telephone: (415) 538-4390

## **DEADLINE FOR WRITTEN COMMENTS**

All written materials must be received by the Insurance Commissioner, addressed to the contact person at the address listed above, no later than 5:00 p.m. on June 28, 2002. Any written materials received after that time will not be considered.

## **COMMENTS TRANSMITTED BY E-MAIL OR FACSIMILE**

The Commissioner will accept written comments transmitted by e-mail provided they are sent to the following e-mail address: BirenA@insurance.ca.gov. The Commissioner will also accept written comments transmitted by facsimile provided they are directed to the attention of Andrea Biren and sent to the following facsimile number: (415) 904-5854. **Comments sent to other e-mail addresses or other facsimile numbers will not be accepted. Comments sent by e-mail or facsimile are subject to the deadline set forth above for written comments.**

## **ADVOCACY OR WITNESS FEES**

Persons or groups representing the interests of consumers may be entitled to reasonable advocacy fees, witness fees, and other reasonable expenses, in accordance with the provisions of California Code of Regulations, Title 10, Chapter 5, Subchapter 4.5, in connection with their participation in this matter. Interested persons should contact the Office of the Public Advisor at the following address in order to inquire about the appropriate procedures:

California Department of Insurance  
Office of the Public Advisor  
300 Capitol Mall, 17th Floor  
Sacramento, CA 95814  
(916) 492-3559

A copy of any written materials submitted to the Public Advisor regarding this rulemaking must also be submitted to the contact person listed above. Please contact the Office of the Public Advisor for further information.

## **INFORMATIVE DIGEST**

### **SUMMARY OF EXISTING LAW AND POLICY STATEMENT OVERVIEW**

Pursuant to the initiative known as Proposition 103, a prior approval hearing must take place for certain applications for insurance rates (Ins. Code §1861.08). Existing law includes certain regulations implementing the hearing requirement for Proposition 103 lines of insurance (Title 10, California Code of Regulations (“CCR”), Subchapter 4.8, Articles 6, and 8, and Subchapter 4.9) and earthquake insurance offered by the California Earthquake Authority (Title 10, California Code of Regulations, Subchapter 7.7.) The Insurance Commissioner has determined

that certain modifications to these regulations are necessary in order to effectively administer the hearing procedure. The amendments can be summarized as follows:

a. Under existing Title 10, CCR § 2648.3(c), a rate review hearing must start within 180 days of the date a rate application is received. Review and negotiations taking place between the applicant and the Rate Regulation Branch of the Department of Insurance can use up much of this 180 days. Even when this time limit is waived, the hearing may have to commence before final rulings on motions to compel discovery and motions to strike because the timeframes for those activities run from the notice of hearing, not the date the application is received. (See amounts of time given in existing Title 10, CCR §§ 2655.1 and 2655.6.) Because commencing the hearing before these activities are finished is inefficient, the administrative law judge (“ALJ”) has usually compressed the regulations’ timeframes for these activities. The proposed amendments codify the compressed timeframe by providing for mandatory document production with the rate application, shortening time for the production of documents in discovery and for the first submission of prepared testimony and motions to strike. However, the ALJ retains discretion to continue the hearing date for good cause shown.

b. Existing law creates another timing problem when the ALJ is writing the proposed decision. This timing problem arises from the overlap of statutes addressing when the ALJ proposed decision is due with regulations on getting additional evidence, taking official notice, scheduling oral argument, closing the record and declaring the matter submitted. Government Code §11517(c) provides that the ALJ’s decision shall be prepared within 30 days after the case is *submitted*. Existing regulations say that the case is submitted after oral argument (Title 10, CCR §2658.1). But InsuranceCode § 1861.055(d) says that the ALJ’s decision shall be rendered within 30 days of the *closing of the record*. Since the record closes 15 days (not business days) after filing of reply briefs, for these two statutes to work harmoniously, there is an undesirable rush to oral argument. (Title 10, CCR § 2655.5(d).) However, if oral argument is desired, questions for the oral argument have to go out 10 days (not business days) before the oral argument. Thus, the judge is in the position of having to set an oral argument for 15 days after the filing of reply briefs in order to have the oral argument within the record. That means that questions must be composed and faxed out within the 5 days (not business days) after reply briefs are received. While this might work in some cases, in complex cases with lengthy briefs from multiple parties, the timeframe impinges too much on the ALJ’s ability to prepare for oral argument. Meanwhile, requests for official notice can be made until the filing of reply briefs. (Title 10, CCR §2655.10.) Therefore, an opposition to a request for official notice and a decision on whether to take official notice must also occur within this 15 day window. Also, occasionally an ALJ’s order for additional evidence may not be fulfilled until during this period. The multiple time constraints mean that the questions for oral argument, the preparation for oral argument and the preparation of the proposed decision after consideration of all the evidence are simply too compacted in complex cases. The proposed amendments to the regulations would move up the date for final requests for official notice and limit the time for refutation, allow the judge an extra 15 days

within which to schedule oral argument, close the record and have the proceedings submitted...

c. Currently the regulations implicitly assume that cases are settled at some point after the judge has heard some evidence. (Title 10, CCR §2656.2) In fact, most settlements occur in the time between the issuance of the Notice of Hearing and the first introduction of evidence. The judge has received no evidence on which to base a decision concerning whether the settlement is “in the public interest” or is “fundamentally fair, adequate and reasonable.” The proposed amendments to the regulations provide for submission of declarations in support of the settlement addressing the issues of public interest, fairness, adequacy and reasonableness.

d. The regulations do not currently require the Commissioner to act on the proposed decision, or issue his own decision, within any particular timeframe. While it is arguable that this result was intended by the drafters of Proposition 103, the public interest is better served by requiring a decision within a reasonable period of time.

e. The regulations do not currently require that the Department of Insurance Administrative Hearing Bureau (“AHB”) be separately notified of the appeal of a decision. A new regulation will require service on AHB of petitions for review of final decisions and the final court decision. This would ensure that the AHB, which functions independently from the Department’s Legal Division, knows when decisions are appealed and the outcome of that appeal.

f. Title 10, CCR §§ 2651.1, 2652.5, 2655.1, 2659.1, 2661.3, refer to the Administrative Law Bureau. Because all sections of the Department of Insurance deal with administrative law, the name of the adjudicative bureau has been changed. The references in the CCR need to be changed to the Administrative Hearing Bureau to avoid confusion.

## **EFFECT OF PROPOSED ACTION**

Overall, the proposed regulations will remedy the various problems identified above in the current regulations as well as other problems typically encountered in rate review cases. .

§2642.2 is modified to delete a subdivision that allows the Commissioner to give directions on a matter pending before an administrative law judge even when such direction has not been requested.

§2648.4 is modified to clarify that the Commissioner can request whatever documents are needed to perform a complete analysis of an application.

§§2651.1, 2652.5, 2655.1, 2659.1, and 2661.3 are modified to change Administrative Law Bureau to Administrative Hearing Bureau.

§2651.1 subdivisions (e) and (i) are modified to clarify that authorization by the administrative law judge is necessary before pleadings can be filed by facsimile or electronic transmission.

§ 2655.1 is modified to begin discovery with the Notice of Hearing, allow alternatives to traditional discovery, and compress the timeframes between actions during the discovery phase of the case.

§2655.6 is modified to require applicant's direct prepared testimony earlier and the time is shortened for filing a motion to strike, so that the motion will be ruled upon before other parties' testimony is due. Additionally, documents supporting a claim of expert status must accompany the prepared testimony.

§2655.5 is modified to clarify that the administrative law judge can request additional evidence until the record is closed and that all parties must have an opportunity to see and object to the additional evidence. The deadline to close the record is extended in order to allow for submission of additional evidence ordered by the ALJ both before and after oral argument as has sometimes been necessary.

§2655.10 is modified to require requests for official notice earlier in the process so that there is time to get objections and refutations before oral argument.

§2656.1 is modified to provide for notice to interveners of any stipulation or settlement and to clarify that declarations are required in support of the stipulation or settlement if there is no admitted evidence in the record. The amendments also clarify that both a stipulation and a settlement are subject to a hearing upon objection.

§2656.2 and 2656.3 are modified to clarify that the terms of a stipulation or settlement adopted by the ALJ must be included in a proposed decision to the Commissioner. Previously this subdivision was included in the section on rejection of a stipulation or settlement, which was confusing.

§2656.4 is modified in light of case law to delete the absolute prohibition on discovery or admissibility of information regarding approval of another insurer's application.

§2658.1 is modified so that it is clear that a proceeding is not submitted until all the argument and evidence is in and the ALJ has had a reasonable amount of time (15 days) to be sure that no additional evidence is needed.

§2659 is added to require the Commissioner to act on the proposed decision within 100 days, or the proposed decision is deemed adopted. The Commissioner also has the option of remanding for more evidence, or taking the evidence personally, and issuing a final decision after the augmentation of the record within an additional fixed timeframe.

§2660 is added to require service on the Administrative Hearing Bureau of any petition for review of the Commissioner's final decision and any final decision from a reviewing court.

Finally, §2697.3 is modified to make it consistent with other rate hearings regarding when the time for decision begins to run. It is changed from date of submission to date the record is closed to ensure that all the argument and evidence is considered. Another proposed amendment to this section makes explicit the Insurance Code §10089.11(d) exception to public availability of documents.

## **MANDATES ON LOCAL AGENCIES OR SCHOOL DISTRICTS**

The proposed regulations do not impose any mandate on local agencies or school districts. There are no costs to local agencies or school districts for which Part 7 (commencing with Section 17500) of Division 4 of the Government Code would require reimbursement.

## **COST OR SAVINGS TO STATE/LOCAL AGENCY OR SCHOOL DISTRICT OR IN FEDERAL FUNDING**

The Commissioner has determined that the proposed regulations will result in no cost or savings to any state agency, no cost to any local agency or school district that is required to be reimbursed under Part 7 (commencing with Section 17500) of Division 4 of the Government Code, no other nondiscretionary cost or savings imposed on local agencies, and no cost or savings in federal funding to the State.

## **ECONOMIC IMPACT ON BUSINESSES AND THE ABILITY OF CALIFORNIA BUSINESSES TO COMPETE**

The Insurance Commissioner has made an initial determination that the amendments to these regulations may have a significant adverse economic impact on businesses, including the ability of California businesses to compete with businesses in other states. The types of businesses that may be affected are insurers, and indirectly, independent agents and brokers. The projected compliance requirement is adherence to a shortened timeframe for various actions while litigating rate review cases. The Commissioner has not considered alternatives that would lessen any adverse economic impact on business and invites interested parties to submit proposals. Submissions may include the following considerations:

- (i) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to businesses.
- (ii) Consolidation or simplification of compliance and reporting requirements for businesses.
- (iii) The use of performance standards rather than prescriptive standards.
- (iv) Exemption or partial exemption from the regulatory requirements for businesses.

## **POTENTIAL COST IMPACT ON PRIVATE PERSONS OR ENTITIES/BUSINESSES**

The Commissioner is not aware of any cost impacts that a representative private person or business would necessarily incur in reasonable compliance with the proposed action. All procedures now required were previously required; only the timeframe for accomplishing procedural steps has been changed.

## **FINDING OF NECESSITY**

The Commissioner finds that it is necessary for the health, safety, or welfare of the people of the state that the regulations apply to businesses.

## **EFFECT ON JOBS AND BUSINESSES IN CALIFORNIA**

The Commissioner is required to assess any impact the regulations may have on the creation or elimination of jobs in the State of California, the creation of new businesses, the elimination of new businesses, and the expansion of businesses currently operating in the state. The Commissioner does not foresee that the proposed regulations will have an impact on any of the above but invites interested parties to comment on this issue.

## **IMPACT ON HOUSING COSTS**

The matters proposed herein will have no significant effect on housing costs.

## **ALTERNATIVES**

The Commissioner must determine that no reasonable alternative considered by the Commissioner or that has otherwise been identified and brought to the attention of the Commissioner would be more effective in carrying out the purposes for which the regulations are imposed or would be as effective and less burdensome to affected private persons than the proposed regulations. The Commissioner invites public comment on alternatives to the regulations.

## **IMPACT ON SMALL BUSINESS**

The Commissioner has determined that the proposed amendments may indirectly affect small businesses to the extent independent agents and brokers (as opposed to those who are insurance company employees) qualify as small businesses. It is conceivable that if, as a result of the changes the proposed action makes in the way rate cases proceed to hearing, rate increases are approved faster, then independent agents and brokers may be able to sell fewer policies, to the extent consumers find the product less attractive on account of higher premiums.

## **COMPARABLE FEDERAL LAW**

There are no existing federal regulations or statutes comparable to the proposed regulations.

## **TEXT OF REGULATIONS AND INITIAL STATEMENT OF REASONS**

The Department has prepared an initial statement of reasons that sets forth the reasons for the proposed regulations. Upon request, the initial statement of reasons and the proposed text of the regulations will be made available for inspection and copying. Requests for the initial statement of reasons and/or the text of the proposed regulations or questions regarding this proceeding should be directed to the contact person listed above. Upon request, the final statement of reasons and/or rulemaking file will be made available for inspection and copying once it has been prepared. Requests for the final statement of reasons and/or rulemaking file should be directed to the contact person listed above.

The file for this proceeding, which includes a copy of the proposed regulations, the statement of reasons, the information upon which the proposed action is based, and any supplemental information, including any reports, documentation and other materials related to the proposed action that is contained in the rulemaking file, is available for inspection and copying at 45 Fremont Street, 22nd Floor, San Francisco, California 94105, between the hours of 9:00 a.m. and 4:30 p.m., Monday through Friday.

## **AUTOMATIC MAILING**

A copy of this notice, including the informative digest, which contains the general substance of the proposed regulations, will automatically be sent to all persons on the Insurance Commissioner's mailing list.

## **WEBSITE POSTINGS**

Documents concerning this proceeding are available on the Department's website. To access them, go to <http://www.insurance.ca.gov>. Find near the top of the page the major heading 'Protecting Consumers.' In this section, scroll down until you see the subheading 'BE INFORMED.' Click on the nearby 'Search for Proposed Regulations' link. When the 'Search or Browse for Documents for Proposed Regulations' screen appears, you may choose to find the documents either by conducting a search or by browsing for them by name.

To search, enter "RH02020999" (the Department's regulation file number for these regulations) in the search field. Alternatively, search using as your search term the California Insurance Code section number of a code section that the regulations implement (for instance, "1861.08"), or search by keyword ("discovery," for example, or "testimony"). Then, click on the 'Submit' button to display links to the various filing documents.

To browse, click on the 'Browse All Regulations' button near the bottom of the screen. A list of the names of regulations for which documents are posted will appear. Find in the list the 'Amendments to Procedural Regulations for Rate Cases' link, and click it. Links to the documents associated with these regulations will then be displayed.

## **MODIFIED LANGUAGE**

If the regulations adopted by the Department differ from those which have originally been made available but are sufficiently related to the action proposed, they will be available to the public for at least 15 days prior to the date of adoption. Interested persons should request a copy of these regulations prior to adoption from the contact person listed above.

Dated: April 26, 2002

HARRY W. LOW  
Insurance Commissioner

By \_\_\_\_\_/s/\_\_\_\_\_  
Harry W. Low